



Western States Petroleum Association

June 20, 2007

Assistant Regional Director
Protected Resources Division
National Marine Fisheries Service
Northwest Region
7600 Sand Point Way NE
Seattle, WA 98115
Email: orca.plan@noaa.gov

Re: Comments of Western States Petroleum Association on Advance Notice of Proposed Rulemaking Concerning Protective Regulations for Killer Whales in Puget Sound, Washington

The Western States Petroleum Association ("WSPA") appreciates the opportunity to provide the National Marine Fisheries Service ("NMFS") with the following comments and information concerning potential protective regulations for Southern Resident killer whales (*Orcinus orca*).¹ WSPA represents commercial marine transport companies, oil terminals, refineries, and pipelines in Puget Sound, Washington, and on the West Coast of the United States. Member companies operate marine vessels that transport a range of crude oil, petroleum products, and other economically important materials to and from ports on the West Coast. As indicated in our previous comments, WSPA and its member companies support responsible and informed environmental stewardship.² Continued safe, secure, efficient, and environmentally-responsible operation of member vessels and facilities are issues of regional and national importance.

The Advance Notice of Proposed Rulemaking ("ANOPR") requests information and comments on whether regulations or other measures are necessary to protect killer whales in Puget Sound, Washington. The ANOPR focuses primarily on the need for regulatory measures to address vessel effects. Specifically, NMFS seeks comments on (1) management options for regulating vessel interactions with killer whales; (2) scientific information regarding the effects of vessels on killer whales and their habitat; and (3) the economic impact of regulating vessel interactions.

¹ See 72 Fed. Reg. 13,464 (March 22, 2007).

² On July 3, 2006, WSPA submitted preliminary comments on a draft conservation plan that NMFS previously prepared under the Marine Mammal Protection Act ("MMPA"). On August 11, 2006, WSPA submitted extensive comments in response to NMFS' proposed rule to designate critical habitat for the species. On March 19, 2007, WSPA submitted comments on the draft killer whale recovery plan published by NMFS on November 28, 2006. We hereby incorporate these documents by reference, and request that NMFS include copies of these documents in the administrative record for this proceeding.

I. Relationship of Regulatory Measures to Recovery Plan

As a preliminary matter, WSPA believes it somewhat premature for NMFS to begin developing regulatory measures for killer whale conservation until the agency finalizes a recovery plan for the species. As explained in WSPA's comments on the November 28, 2006, draft killer whale recovery plan, section 4(f)(1)(B)(iii) of the ESA requires NMFS to incorporate into recovery plans the time and cost required to implement site-specific recovery activities.³ The purpose of such an analysis is to both inform the agency's development of conservation programs, and to disclose the potential costs of conservation measures before the agency takes action. Given these considerations, WSPA recommends that NMFS delay issuance of protective regulations until such time that NMFS finalizes the draft recovery plan and responds to comments submitted on the draft plan. Doing so will help insure that NMFS fully considers all relevant information before enacting regulatory programs that could have substantial economic impacts on regulated industry.

II. Sound and Noise Disturbance Attributed to Marine Vessels

The ANOPR and draft recovery plan suggest that vessel noise may be detrimental to killer whale survival by impairing foraging and other behavior patterns. NMFS recommends that the presence and activity patterns of non-whale-watching vessels in the vicinity of Southern Resident and other killer whales should be evaluated to determine their potential effect. NMFS also suggests the need to establish regulations regarding vessel activity in the vicinity of killer whales, including adoption of approach regulations and establishment of time and area closures.

As the draft recovery plan indicates, the impacts of vessel noise on killer whales, particularly noise associated with deep draft cargo vessels, is poorly understood, and threshold levels at which underwater sounds become harmful are unknown.⁴ Low frequency sound associated with deep draft vessels appears to occur outside the auditory range of killer whales.⁵ In 2003 the National Research Council ("NRC") concluded that no documented evidence exists of ocean noise being the direct physiological agent of marine mammal death under any circumstances.⁶ Even less is understood about the long-term effects of ambient noise on marine organisms.

No evidence currently exists to suggest that vessel noise associated with deep draft vessels, such as oil tankers and cargo vessels, is causing or may cause direct injury or mortality

³ See 16 U.S.C. § 1533(f)(1)(B)(iii); see also Letter from Frank Holmes, WSPA, to NMFS (March 19, 2007) (comments on draft killer recovery plan).

⁴ See Draft Killer Whale Recovery Plan at 100-101 (November 28, 2006).

⁵ Id. at 19,108 (stating that killer whale hearing sensitivity declines below 4 kHz and above 60 kHz, but that deep draft vessels generate low frequency sound in the range 5 to 500 Hz, an order of magnitude lower than the auditory range of killer whales).

⁶ See National Research Council, *Ocean Noise and Marine Mammals*, Committee on Potential Impacts of Ambient Noise in the Ocean on Marine Mammals (2003).

to killer whales. In view of the considerable uncertainties associated with the effects of vessel noise on marine mammals, it is premature to conclude a need exists for regulatory programs to address these types of vessel activities. Through the pending recovery plan process and future regulatory processes, NMFS should evaluate available scientific research, and it should focus its regulatory actions on specific types of vessels interactions that pose the greatest risk to the species.

III. Exemptions from Vessel Regulations

In the ANOPR, NMFS references vessel approach regulations adopted in 2001 for humpback whales in Alaska.⁷ In its 2001 rulemaking, NMFS exempted from approach regulations (1) vessels limited in their ability to maneuver, and (2) state, federal, and local government vessels operating in the course of their official duties.⁸ Regarding vessels with limited maneuvering ability, NMFS stated the following:

Certain vessel types and some vessels in certain situations may find it necessary to closely approach a humpback whale to maintain safe operating conditions. Limitations in maneuverability could pose hazards to the vessel should it be required to adhere to the whale approach regulations. The primary motivation for this exemption is vessel and personal safety. Some examples of vessels that may be restricted in their ability to maneuver and who may be able to claim this exemption are tugs pulling large barges, vessels with deep draft that may encounter problems maneuvering in narrow and/or shallow passageways, vessels laying cable or other similar vessel types or situations.⁹

Regarding government vessels operating in the course of their official duty, NMFS stated the following:

NMFS is also exempting state, local and Federal government vessels operating in the course of official duty. The activities of these vessels are often critical to important safety missions or other activities that require that they closely approach a humpback whale. Examples of this type of operation may be Coast Guard vessels engaged in a search and rescue operation, military ships undertaking activities critical to national security, local or state government enforcement or safety operations, research vessels, or vessels engaged in disentangling a humpback whale or other marine mammals.¹⁰

Finally, NMFS noted that these examples of exempt vessel operations are not exhaustive, and that other situations may exist in which vessels would be exempt from adopted approach

⁷ See 72 Fed. Reg. 13,464, 13,466.

⁸ See 66 Fed. Reg. 29,502, 29,503 (May 31, 2001).

⁹ Id. at 29,504.

¹⁰ Id.

regulations.¹¹ NMFS noted that “any person who claims the applicability of the exemption has the burden of proving the exemption applies.”¹²

WSPA supports the adoption of approach regulation exemptions in the Puget Sound region such as those adopted in 2001 for humpback whales in Alaska. As NMFS previously concluded, such exemptions will insure the safe and unimpeded operation of critical commercial and governmental vessels. WSPA further recommends that NMFS clarify that such exemptions will be deemed to apply to oil tankers, container vessels, and similar deep draft vessels operating in compliance with applicable U.S. Coast Guard regulations. Such a clarification will make enforcement of and compliance with any approach regulations feasible.

IV. Legal Considerations Relevant to Marine Transportation

Establishing regulations that restrict commercial vessel operations in Puget Sound, Washington, could have significant safety, security, and economic implications for vessel traffic in the Puget Sound region. Safe and efficient movement of cargo to the Port of Seattle, Port of Tacoma, and oil refineries is an important regional issue, with potential national and international implications.

Container and tanker vessel movements are highly regulated by numerous federal laws and international treaties. Vessel movements and shipping lane operations in general implicate important national security considerations and international agreements. NMFS’ legal authority to regulate in this complex legal environment is at best unclear. WSPA believes that prior to adopting protective regulations, NMFS should carefully analyze these issues through discussions with the State Department, the Department of Defense, the U.S. Coast Guard, and the shipping industry to ensure that any potential regulatory actions reflect a realistic assessment of national security issues, treaty obligations, and interstate commerce considerations.¹³

V. Compliance with Federal Laws in Adopting Vessel Regulations

WSPA believes that adoption of approach regulations or other conservation programs for killer whales may constitute a major federal action under the National Environmental Policy Act (“NEPA”), thus requiring the preparation of an Environmental Impact Statement (“EIS”).¹⁴ The scoping process associated with EIS preparation may prove particularly useful in developing a

¹¹ Id.

¹² Id.

¹³ As WSPA has suggested in previous comments on the killer whale recovery plan, NMFS should consider convening an advisory group consisting of governmental and industry representatives to advise the agency on vessel-related regulatory issues. Doing so may assist NMFS in avoiding conflicts with existing laws and regulations, and it may also help insure that vessel regulations do not result in unintended impacts to vessel safety or security.

¹⁴ See 42 U.S.C. §§ 4321 et seq.

range of regulatory alternatives that NMFS could consider prior to taking action. Such a NEPA process could also be used to evaluate actions identified in a final recovery plan.

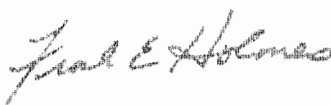
Aside from NEPA compliance, NMFS' adoption of conservation regulations may require the preparation of a Regulatory Flexibility Act analysis and a Biological Opinion under Section 7 of the ESA.¹⁵ Through these processes, NMFS should carefully evaluate the potential direct, indirect, and cumulative effects of any regulatory proposals, including, but not limited to, impacts associated with vessel safety, security, and maneuverability in Puget Sound.

VI. Summary and Conclusions

WSPA recommends that NMFS delay proposing or enacting protective regulations until the agency finalizes the proposed killer whale recovery plan. Doing so will permit NMFS to more fully assess the economic impacts of regulatory measures prior to taking action. WSPA also recommends that NMFS engage directly with regulated industry prior to developing potential regulatory proposals. Doing so will assist the agency in developing conservation programs that minimize unintended consequences, such as adverse impacts to national security, the environment, and the economy.

Thank you for the opportunity to provide comments and recommendations on the ANOPR. We appreciate your inclusion of these materials in the administrative record for this proceeding. Please feel free to contact me at (360) 352-4506 if you have any questions regarding these comments or recommendations.

Sincerely,



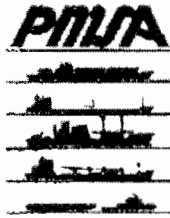
Frank E. Holmes, Northwest Manager
Western States Petroleum Association

Cc: Mike Moore, Vice President
Pacific Merchant Shipping Association

Rear Admiral Richard R. Houck, Commander
13th Coast Guard District
United States Coast Guard

James M. Lynch, Chair
Puget Sound ESA Business Coalition

¹⁵ To the extent that NMFS determines that its adoption of protective regulations may, either directly or indirectly, affect listed species, NMFS may be required to consult with itself under Section 7 of the ESA, and to comply with the requirements of the Marine Mammal Protection Act ("MMPA"). See, e.g., 16 U.S.C. § 1536(a) (ESA consultation requirements); 16 U.S.C. § 1371(a)(5)(MMPA requirements prior to authorizing incidental take under the ESA).



June 18, 2007

Assistant Regional Administrator
Protected Resources Division, NW Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

Re: Advance Notice of Proposed Rulemaking Concerning Protective Regulations for Killer Whales in Puget Sound, Washington

To whom it may concern:

Thank you for the opportunity to comment on the advanced notice of proposed rulemaking. The Pacific Merchant Shipping Association (PMSA) members include commercial vessel owners and operators that operate in the Puget Sound region.

We support the agency's efforts to develop a scientifically valid recovery plan for the Southern Resident Killer Whales. We recognize that more information is needed to fully understand the impacts of both commercial and recreational vessel traffic on whale behavior. We are confident that NMFS will continue to seek the best available science to develop a rational recovery plan that involves comprehensive stakeholder input and coordinates with other planning and regulatory agencies.

Although the proposed rule addresses commercial and recreational whale watching activities, it is unclear what the intentions are regarding commercial deep draft vessel transits. Large commercial deep draft vessel traffic is highly regulated and managed via traffic separation schemes, traffic lanes, vessel traffic service, compulsory Pilotage, tanker/tug escort rules, Captain of the Port orders and the Harbor Safety Plan to name a few.

Order and predictability are critical to safe and effective management of vessel traffic. Any changes to this carefully constructed regime may increase risk of marine casualties and environmental harm. We strongly recommend that you consider vessel activities by category to better account for the differences involved - a container vessel operating in the traffic lanes is completely different than a whale watch boat. Further, we recommend that you seek input from the U.S. Coast Guard and potentially impacted vessel operators by sector.

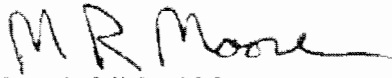
Pacific Merchant Shipping Association,
World Trade Center 2200 Alaskan Way, Suite 160, Seattle, Washington
Phone: 206-441-9700, FAX: 206-441-0183, e-mail: mmoore@pmsaship.com

We offer our expertise to help your office understand the capabilities and practices of deep draft vessels. Deep draft vessels travel in well established shipping lanes and do not have the maneuverability of smaller vessels. Because of these practices and limitations we support establishing exceptions to any implementation of a minimum approach rule for situations in which approach is not reasonably avoidable.

We would be happy to provide you with more information about deep draft vessel transits and vessel traffic management. If you have questions, please contact me in the Seattle office at (206) 441-9700.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "M R Moore".

Captain Michael Moore
Vice President
Pacific Merchant Shipping Association



1900 N. Northlake Way, Suite 233
Seattle, WA 98103-9087

Phone: (206) 634-0911
Fax: (206) 632-0078

www.nmta.net
www.seattleboatshow.com

Michael Campbell
President

Alan Bohling
Chairman

Board of Trustees

Greg Allen
Yacht Masters Northwest

Bill Baker
Bakes Marine Center

Patrick Baker
Boater's World

Alan Bohling
Seattle Boat Company

Doug Burbridge
Mercer Marine

Bruce Hedrick
Northwest Yachting Magazine

Mark Helgen
Olympic Boat Centers

Dwight Jones
Elliott Bay Marina

Neil McCurdy
Grand Banks Yachts

Dennis Nick
Nick's Boats & Motors

Jerry Todd
SonShip Yacht Sales

Dave Young
Volvo Penta of the Americas

Bill Youngsman
Twin Bridges Marina

*Promoting the
Recreational Boating
Industry in the
Pacific Northwest*

June 11, 2007

Assistant Regional Administrator
Protected Resources Division
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

Dear Sir/Madam:

Thank you for the opportunity to comment on the pending proposed Recovery Plan and related notice of proposed rule making for the Southern Resident killer whale population, applicable to inside marine waters of Washington State. The Northwest Marine Trade Association represents over 850 recreational boating businesses in the Pacific Northwest. We are dedicated to all facets of boating, including the applicable operation of recreational boating and businesses linked to observing killer whale activities.

Predictably, there is a variety of viewpoints from businesses within this organization. However, the NMTA supports conservation management and protection of the resident killer whale population. We also recognize historical efforts by your agency to inform and educate our constituency through programs such as "Whale Wise" and other private and government organizations.

While we have encouraged businesses belonging to our Association who are passionate about this issue to represent their views in this process, we have the following recommendations:

1. We support codification of the Whale Wise guidelines. These guidelines are consistent with boating regulations for Humpback whales in Hawaii and Alaska.
2. We recommend a complete evaluation of the need for regulations governing vessel restrictions, in potential time and area closures. At this writing, we are not convinced that educational efforts have not been exhausted.
3. We support operator permit or certification programs for commercial operation of killer whale watching.

Page 2
June 11, 2007

4. We urge the agency to pursue further scientific and commercial data on the effects of killer whale observation.
5. We are very concerned about the economic impacts of significant restrictions for the Washington whale watching industry and recreational boating. Further, we are willing to provide Association economic data to help guide your decision making process.

Thank you for this opportunity to comment. It is our hope that we can communicate with you further, as we recognize the importance of your decisions on the Northwest boating industry.

Best Regards,

A handwritten signature in black ink, appearing to read "Michael Campbell". The signature is fluid and cursive, with a large initial "M" and a stylized "C".

Michael Campbell
President



WWOANW

PO Box 2404
Friday Harbor, WA 98250-2404
USA

www.wwoanw.org

Via email: orca.plan@noaa.gov

June 20, 2007

Assistant Regional Administrator
Protected Resources Division
Northwest Regional Office
National Marine Fisheries Service
7600 Sand Point Way NE
Seattle, WA 98115

Re: Federal Register Docket No. 070125020-7020-01; I.D. 010907A
Protective Regulations for Killer Whales in the Northwest Region under the
Endangered Species Act and Marine Mammal Protection Act

Dear Sirs:

Thank you for the opportunity for input on the Proposed Rulemaking. The information and comments you seek are imbedded herein and specifically at the end.

The Whale Watch Operators Association Northwest is committed to the conservation of the Southern Resident Killer Whales ("SRKW's") and their main prey species, the salmon. It is clear that the regulatory efforts directed at the long-term recovery and stability of salmon populations and their habitats in the Pacific Northwest will significantly contribute to the conservation of the SRKW's. This will mean significant reductions to or elimination of salmon quotas within all sectors. Studies have shown the high correlation between salmon stocks and the SRKW population. Salmon habitats, including shore areas that may affect any salmon runs, need regulatory critical habitat designation and protection.

Furthermore, regulations need to be directed at reducing the toxic loading of our coastal ecosystems. Removal of toxic products needs to be a two-fold effort aimed at reducing both the toxic levels input into the local environment, as well as removal of those already in the system.

It is known that PBDE (polybrominated diphenyl ethers) are harmful to the environment, and they should be banned. These and other such toxic chemicals have no place in our world; they are dangerous to whales, humans and potentially all other life on earth.

Perhaps a good use of public funds is public education programs aimed at reducing the individual toxic footprint of Pacific Northwest residents. It is imperative everyone become educated on the products they use in their homes and cars, and the potential effects to their families and the environment – whales included.



WWOANW

PO Box 2404
Friday Harbor, WA 98250-2404
USA

www.wwoanw.org

In order to monitor changes in the population, we need dedicated funds for the Center for Whale Research to continue their photo-identification, population demographics and winter distribution research. Funds also need to be dedicated for groups like the Orca Network who are already engaging the public in non-invasive tracking of killer whales while educating participants. These data, though not systematically collected, still assist in understanding the habitat use and movements of particular pods of whales. This will certainly contribute to any critical or important habitat designations.

The majority of the demise of the SRKW population occurs while they are not in the Georgia and Puget Sound Basins. It is therefore imperative to understand the habitats used by SRKW's during the winter months, to fully grasp the threats to their survival they face while not near these inland waters. It seems reasonable to think that the effective designation of critical habitat requires knowing the relative use/importance of different areas used throughout the year, in order to be biologically and ecologically complete.

Additionally, any exclusions or limitations that result in regard to human activity within critical habitat must apply to all sectors including the Navy and the Coast Guard. The recent incident of the USCG machine gunning within short distance of J-Pod is more than disheartening and begs many questions about existing regulations. Regulatory clarification is required in this area.

Members of the Whale Watch Operators Association Northwest would be pleased to be a part of the educational and public outreach required to initiate these processes as we have the unique opportunity to act as floating educational facilities wherein the audience is largely already environmentally minded.

In regard to measures aimed at vessel traffic, we are firm supporters of the Be Whale Wise initiative, as it was developed. We believe that the efforts required to educate recreational boaters needs to be enhanced. Continued monitoring of vessel numbers and behavior in proximity to killer whales is a vital component to understanding the whales' local environment.

The Whale Watch Operators Association Northwest would like to see continued support of the scientific research that has been initiated to understand the seasonal acoustic changes in the ocean. This includes answering questions regarding engine noise levels as related to distance to whales, weather conditions, behavior of the vessel, type of vessel etc in the areas where whale watching occurs. A complete study should include all vessel traffic types in the area, not just whale watching boats.



WWOANW

**PO Box 2404
Friday Harbor, WA 98250-2404
USA**

www.wwoanw.org

Further to the noise issue, there should be no testing of naval sonar in killer whale habitat or in areas when salmon are migrating. The effect of this type of pollution to southern resident killer whales was noted in Haro Strait, with the USS Shoup. Further evidence of the disruptive and potentially damaging effects of this human activity are not required. Although we welcome nuclear aircraft carriers, it is interesting to note that the SRKW's leave the inside waters and head off shore every time one arrives.

Education of sport fish operators is also crucial as this is the sector of the maritime community most likely to directly overlap in distribution with foraging resident killer whales. In many cases, it has been observed that the whales travel through groups of vessels actively engaged in fishing activities. Dire consequences may result if depredation occurred that included ingestion of the hook. These vessels also produce noise and have propellers just like any other, and the 100-yard minimum distance should apply across all sectors equally.

The Whale Watch Operators Association Northwest has developed a protocol to address commercial operators whose actions do not reflect the spirit of Be Whale Wise or our own dynamic operating guidelines. Our goal is to further improve communication between members and monitoring groups, and set the precedent for standards of ethical whale watching. The monitoring and education outreach groups are crucial for whale conservation with our environment in its current state. Please ensure dedicated funding is available to allow these activities to continue.

In the face of global warming, large scale models need to be developed that takes into account the possible effects to local salmon populations with increased ocean temperatures. A forecast of the potential future quality of current habitats needs to be assessed. In addition, this may provide insight into habitats that may become important in the future, and if so, it seems like a positive strategy to initiate conservation measures in those regions now.

Further to our disciplinary review committee protocol, which was implemented in the spring of 2007, the WWOANW is seeking more formal communication links with NMFS and NOAA (and DFO) to report critical infractions by our members. Based on third party data, such letters will formally request modification of operating behaviors and their effectiveness is partially dependant on NMFS and NOAA interaction. The construction process of such protocol has already begun with NGO's, including Sound Watch and Strait Watch.

Additionally, it should be noted that our industry will not survive if vessels are 200 or more yards from the whales. The very important education element of our tours would be significantly compromised at those distances to the point where they would be



WWOANW
PO Box 2404
Friday Harbor, WA 98250-2404
USA

www.wwoanw.org

ineffectual due to frustration, as the length of a football field already strains many passengers' patience. Enforcement of the existing 100 yard rule is the most productive step to create a safe buffer, and the new Protocol will assist greatly in this regard.

The specific Comments you seek follow, with the above reasoning and elaboration:

1. We advise that there is a need for regulation, utilizing existing guidelines and providing the enforcement to level the playing field for ALL vessels, commercial, private, research and governmental including military and paramilitary, USN and USCG; deep sea traffic and cruise ships. If the rules are not equally applicable to all then they should not exist, which we do not condone.
2. The regulations need to protect the SRKW's where ever they are and whenever they are there, not just in the few summer months that they travel local waters; Find out where they are for the other 7 months of the year and protect them there;
3.
 - a. Management options must include additional enforcement. They should also include our new Self Policing Model (the Industry Executive Review Committee-IERC) which will help fill some enforcement gaps, and fill them now;
 - b. Some operators and many passengers comment that they would prefer to see the minimum approach distance reduced to 50 yards, however, we are not advocating that at this time.
 - c. Use the Be Whale Wise Guidelines AS THEY CURRENTLY EXIST with a minimum approach distance of 100 yards, making regulatory allowances for situations in which the SRKW's approach vessels as well as other situations where approach within the 100 yards is not reasonably avoidable;
 - d. Enforce the Be Whale Wise guidelines and establish a baseline of behavior for ALL vessels of ALL types; none should be exempted from the law; charge or fine operators who do not abide; do not encumber the industry due a lack of enforcement effort; make that effort and ensure a level playing field
 - e. Prohibit running a vessel through a group of SRKW's at any speed, reduce speed to 7 knots (or the SRKW's speed if faster) when in the vicinity of whales (within 400 yards), prohibit separation of calves from mother or attending female,
 - f. Prohibit salmon fishing, commercial or recreational, until such time as stocks recover and SRKW's are delisted as endangered species;
 - g. Prohibit aircraft over whales under 2000 feet and within 2 lateral miles.
 - h. Time and area closures can not go beyond those voluntarily abided by, namely 0.5 Nautical Miles off Lime Kiln Lighthouse for 1.0 shore miles



WWOANW

PO Box 2404
Friday Harbor, WA 98250-2404
USA

www.wwoanw.org

northwest and southeast, when SRKW's are present within; and ¼ mile offshore between Eagle Point and Mitchell Point;

- i. Prohibit swimming with, touching and feeding SRKW's;
- j. We have not seen signs of the SRKW's allowing themselves to be unwillingly herded or surrounded where they can not escape. They always have the third dimension, depth, which many shore based observers tend to overlook, perhaps because they view from solid ground where no such dimension exists for most animals. In years past when it was standard practice to conduct the Stop and Wait Sequence, whales consistently swam between the boats without incident; We must remember that these animals spend the large majority of their time underwater and not at the surface;

4.

- a. Compared with any other type of vessel (pleasure, tug, navy, coast guard, cruise ship, deep sea freighters), the commercial whale watching vessel has less impact on the SRKW's than any other, witness the hundreds of thousands of trips undertaken and the almost perfect record; Combine this with the ecologically friendly engine and drive installations which our industry is pioneering and you have an ever decreasing impact, due to the highly competitive nature of this particular free enterprise system. This highly competitive nature of this industry has pushed it to what some refer to as a tipping point, putting it at risk;
- b. Permit Certification, if any, should be issued by and managed by the international industry association, WWOANW, which has proven itself to be world leader in matters effecting marine mammal viewing and organization. A joint international commission will be too cumbersome, not reactive nor proactive, as the industry is able to be, under the guidance of NMFS. Any permits should allow the holders to go beyond what non-permit holders are able to do. We are not convinced Permitting is necessary at this time, given the pressures the industry is already under and the reductions we are facing.

5.

- a. Regulatory steps taken beyond these suggested herein will significantly and negatively impact the industry, reduce jobs, and negatively impact the regional tourism industry including hotels, ferries, airlines, buses, restaurants. People travel from all over the world to visit the Pacific Northwest and view the icon of this pristine area, the Killer Whale. Additional pressures at this time while we are at a tipping point will result in negative economic impacts to an industry which has taken millions of people to see whales in their wild habitat, and thereby raised the SRKW's awareness to the level it is now at.



WWOANW

**PO Box 2404
Friday Harbor, WA 98250-2404
USA**

www.wwoanw.org

- b. As a result of the reduced travel by the general public, partially due to the after effects of 9/11, our industry has seen reductions in the number of vessel trips and the number of vessels in the vicinity of the SRKW's at any given point in time. This has created an economic tipping point which threatens the industry's well being, before any additional adverse impacts, such as undue regulatory impacts;
- c. Any regulations should apply only to the ESA listed animals, namely the SRKW's, not other whales or marine mammals;

We support the Soundwatch program and note that it should be fully funded to provide the administrative structure that allows timely reporting to the industry and NMFS. This will facilitate the effectiveness of the industry self policing model, the Industry Executive Review Committee, contribute to the filling of some enforcement gaps and provide the information required to ensure feedback is provided to those who can utilize it. The industry should also be empowered to enhance, manage and administrate a more elaborate operator training program than we currently manage, this in collaboration with the NMFS.

We encourage you to regulate very carefully, tread lightly and not upset the delicate balance of a fledging and promising industry with significant economic impact which has done so much for the conservation of these animals and which has been world leaders in the development of its industry guidelines (which can be viewed at www.nwwhalewatchers.org) and which has supported the Be Whale Wise Guidelines from the outset. Increasing the minimum approach zone beyond 100 yards would put all that at risk.

Sincerely,

Whale Watch Operators Association Northwest

Captain Dan Kukat, BCom, CA
President and Chair